IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

SECOND APPEAL NO.1119 OF 2005
WITH
CIVIL APPLICATION NO.1190 OF 2006

Shri Laxman Jagannath Dange & ors. Appellants
vs.
Gokulbai w/o.Kisan Gaikwad & ors. Respondents

Mr.Umesh Mankapure for the appellants.

Mr.Vaibhav Patankar for respondents, 1, 2, 3A to 3-C & 4.

CORAM : ANOOP V. MOHTA,J.

DATED : 14th August, 2007

P.C.

The second appeal is by the purchasers (Defendant nos. 3 to 6) of the property and not by the plaintiff and defendant no.2, who are the owners of the respective share of the joint family property as partitioned and declared by the Courts.

2. The trial Court held that the appellants are the bonafide purchasers of the property Gat No.300 as described and, therefore, partitioned 1/6th share in the property in favour of the plaintiffs and defendants 1 and 2.

3. The appellate court has modified the decree and declared that there was no legal necessity and,

therefore, transaction of appellant with defendant no.1-Hanmant was void and not binding. Therefore set aside the above part of the decree.

4. Rightly, on the following basic reasons, the appellate Court has passed the above impugned judgement and decree:

(a) the appellants unable to place on the record the sale deed based upon which defendant stated that amount of Rs.25,000/- was paid before the Sub-Registrar. The adverse inference was rightly drawn against defendant no.1;

(b) Defendant no.1 unable to prove his case of legal necessity to repay the loan prior to 1983 and he was making expenses at the family and of litigation though he was young boy or about Rs.3000/- spent on marriage of plaintiff no.4, specially when Laxmibai was alive at the relevant time; and

(c) there is nothing to prove on record that appellants paid Rs.25,000/- to the defendant no.1-Hanmant as claimed.

4. The finding as arrived at by the appellate court therefore, cannot be said to be perverse. It is within

the frame work of law and record.

5. Thus, the second appeal is dismissed. The interim order dated 3.8.2006 also stands vacated.

6. C.A. No.1190/2006 is also dismissed accordingly.

[ANOOP V. MOHTA,J.]